STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY	)	
	)	
Approval of the Energy Efficiency and	)	
Demand-Response Plan Pursuant to	)	
Section12-130(f) of the Public Utilities Act.	)	Docket No. 07-0540

POST-HEARING BRIEF OF THE PEOPLE OF THE STATE OF ILLINOIS

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TABLE OF CONTENTS

The People of the State of Illinois (the "People"), by and through Lisa Madigan, Attorney General of the State of Illinois, hereby file this post-hearing brief pursuant to the Illinois Commerce Commission (the "Commission" or "ICC") Rules of Practice, 83 Ill. Admin. Code § 200.800. The People filed a verified petition to intervene in Docket No. 07-0540.[1] That petition was granted on November 20, 2007.

FACTUAL AND LEGAL BACKGROUND

In 2007, the Public Utilities Act ("PUA" or "the Act") was amended to require Commonwealth Edison Company ("ComEd") and the Ameren Illinois utilities[2] ("Ameren") to meet annual energy efficiency and demand-response standards. 220 ILCS 12-103. The new law requires these utilities to comply with the following incremental annual energy efficiency standards: 0.2 percent of energy delivered during the year commencing June 1, 2008; 0.4 percent of energy delivered during the year commencing June 1, 2009; and 0.6 percent during the year commencing June 1, 2010. 220 ILCS 12-103(b). The utilities are also required to implement demand-response measures to reduce their bundled customers' peak demand by 0.1% each year over the prior year. 220 ILCS 12-103(c).

On November 15, 2007, ComEd submitted a three-year plan describing energy efficiency and demand-response programs that ComEd proposes to implement to meet these standards. 220 ILCS 12-103(f); ComEd Ex. 1.0 ("2008-2010 Energy Efficiency and

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[1] Documents from ICC Docket No. 07-0541 were admitted into evidence in this proceeding on January 10, 2008. Those documents can be found on the ICC e-Docket system by accessing docket no. 07-0541.

[2] The Ameren Illinois utilities consist of AmerenIP, AmerenCIPS and AmerenCILCO.

Demand Response Plan", or "the Plan"). The Illinois Department of Commerce and Economic Opportunity ("DCEO") also submitted a three-year plan for DCEO-administered programs designed to meet approximately 25 percent of ComEd's energy efficiency savings requirement. DCEO Exs. 1.0 to 1.7. The DCEO plan includes programs that target units of local government, municipal corporations, school districts and community college districts, which must account for at least 10 percent of ComEd's annual efficiency savings. 220 ILCS 12-103(e); DCEO Ex. 1.0 p. 18.

ComEd and DCEO have proposed a portfolio of energy efficiency and demand-response measures that, by their estimates, will meet the applicable statutory standards for three successive years. ComEd Ex. 1.0, p. 38; DCEO Exs. 1.1 – 1.7. They indicate that, if their estimates about the effectiveness of the proposed measures are accurate, they will be able to meet the standards at a cost that does not exceed the caps specified in 220 ILCS 12-103(d). ComEd Ex. 2.0, p. 12; DCEO Ex. 1.0, pp. 12-13. ComEd has proposed a tariff rider to recover the prudently and reasonably incurred costs of the energy efficiency and demand response measures, as authorized by 220 ILCS 12-103(f)(6). ComEd Ex. 5.0, p. 4-11. Amounts collected through the rider are to be reviewed by the Commission on an annual basis to reconcile the amounts collected with actual costs found to be prudently and reasonably incurred. 220 ILCS 12-103(e).

SUMMARY OF THE ARGUMENT

ComEd has failed to demonstrate that the energy efficiency and demand-response measures proposed in the ComEd and DCEO three-year plans will in fact achieve the statutorily-mandated energy efficiency and demand-response standards, as required by 220 ILCS 12-103(f)(1). ComEd offers only *estimates* of the energy savings and demand reductions that might be achieved if the proposed measures were implemented. Moreover, the accuracy of those estimates is highly questionable because they are not based on Illinois data. Rather, ComEd has attempted to make a case that the proposed plan will meet the standard using net-to-gross ratios applicable in California, a mature energy efficiency market that is very different from the market in Illinois. Hence, the record does not establish that ComEd will be able to meet the statutorily-mandated energy efficiency and demand response standards by implementing the measures proposed in the ComEd and DCEO plans.

In light of this uncertainty, the Commission should condition approval of the ComEd/DCEO energy efficiency and demand-response plans on a requirement that appropriate measurement and evaluation methodology be used to determine, based on actual program performance, whether the standards are actually met. To this end, the Commission should authorize a utility-stakeholder working group to develop appropriate measurement and evaluation methodologies. This work group should review data on program performance and recommend adjustments, on a going-forward basis, to programs that do not achieve the energy savings estimates presented in the ComEd/DCEO plan. These conditions are necessary to ensure that the efficiency and demand-response standards are met, in accordance with 220 ILCS 12-103(b), and that the costs of all proposed energy efficiency and demand-response programs are reasonably and prudently incurred, in accordance with 220 ILCS 12-103(f)(6).

ARGUMENT

I. ComEd has failed to demonstrate that the energy efficiency and demand-response measures proposed in the ComEd and DCEO plans will achieve the annual energy efficiency and demand-response standards, as required by 220 ILCS 12-103(f)(1).

The PUA expressly requires ComEd to "[d]emonstrate that its proposed energy efficiency and demand-response measures will achieve the requirements" for annual energy savings and demand reduction that are specified in the Act. 220 ILCS 12-103(f)(1). ComEd attempts to comply with this requirement by using estimates of the energy savings and demand reductions that might result if the proposed programs were implemented in California, rather than Illinois. As discussed below, data from a mature energy efficiency market like California are of limited use when estimating savings in the nascent Illinois market. ComEd has, therefore, failed to demonstrate that the proposed measures will be sufficient to achieve the statutorily-mandated energy efficiency and demand-response standards.

A. ComEd and DCEO over-estimate the energy efficiency and demand reductions that will result if the proposed programs are implemented in Illinois.

The utilities and DCEO have a legal obligation to produce actual energy efficiency savings and demand reductions. 220 ILCS 5/12-103. ComEd and DCEO attempt to make the case that they will be able to meet these obligations with the programs described in their respective Plans. ComEd Ex. 1.0, p. 38; DCEO Ex. 1.0, pp. 12-15. They predict the energy savings that will be produced by these programs based on standard estimates of the technical potential of the efficiency measures and the extent to which technical potential will be realized in Illinois. *Id.* They use net-to-gross ratios to compare the energy efficiency savings that they actually expect to achieve compared with the technical potential that could be achieved if they could count on 100 percent participation rates and optimal use of the measures that they propose.

ComEd and DCEO base their estimates of program performance on net-to-gross ratios derived from similar programs in California. ComEd Ex. 7.0, pp. 12-13; DCEO Ex. 1.0 p. 54. The assumption that an energy efficiency program that is implemented in Illinois will produce the same results as in California has no basis in fact. California has decades of experience and a generally more aggressive and comprehensive portfolio of programs than Illinois will have from 2008 – 2010. In addition, many of its programs are very mature and have high levels of participation.[3]

ComEd and DCEO have significantly overestimated the energy efficiency savings associated with the programs in their Plans as a result of their reliance on California data. For instance, ComEd's first attempt to offer a commercial lighting efficiency program in a market where there is relatively low customer knowledge about the benefits of efficiency improvements will have a significantly lower net-to-gross ratio than a similar commercial lighting program offered by a California utility that has years of experience administering efficiency programs to customers that have been exposed to years of energy efficiency information and marketing campaigns. Even ComEd concedes that NTG ratios can be strongly influenced by program design and customer characteristics. ComEd Ex. 13.0, pp. 8-9.

[3] ComEd Ex. 6.0, p. 26, line 772ff.

B. The ComEd and DCEO estimates of the energy efficiency and demand reductions that will be achieved under their plans would have been more realistic if they had been based on Midwestern markets that are similar to Illinois.

It is particularly surprising that ComEd and DCEO chose to use California data when there is data available from Midwestern states that much more similar to Illinois than California. There are numerous studies of energy efficiency programs that have been implemented in Wisconsin, Minnesota, Iowa and Missouri that would have been more appropriate to use to develop net-to-gross ratios for Illinois. One excellent Midwestern data set was collected by Ameren Corporation to evaluate efficiency programs in Missouri. AG Exhibits 1.3 to 1.10

A review of the Ameren Missouri data suggests that the ComEd/DCEO estimates based on California data are wildly unrealistic. For instance, an evaluation of Ameren's Missouri refrigerator recycling program shows a savings of 1,038 kWh per refrigerator (AG Exhibit 1.9, Table 6, p. 13). That's about half of the 1,946 kWh savings that the utilities are predicting, based on California data, for the refrigerator recycling programs in their Plans. ComEd Ex. 1.0, p. 46.

Finally, the People object to ComEd's attempts to shift the burden of defending its proposed plan to other parties with claims that no party has suggested alternative values that are preferable to those used in California. CE Ex. 13.0, p. 13. This is contrary to the express language in the statute. The PUA provides that "*the utility* shall . . .[d]emonstrate that its proposed energy efficiency and demand-response measures will achieve the requirements. 220 ILCS 5/12-103(f)(1), emphasis added. Because ComEd and DCEO have failed to comply with that requirement, their plans should not be approved without conditions to correct that deficiency.

II. The Commission should authorize a utility-stakeholder work group to develop appropriate measurement and evaluation methodologies, as a condition of approval of the ComEd/DCEO energy efficiency and demand-response plans.

The PUA requires "independent evaluation of the performance of the cost-effectiveness" and "net program impacts" of ComEd and DCEO's energy efficiency and demand-response programs. 220 ILCS 12-103(f)(7). Most of the parties, including ComEd and DCEO, acknowledge the need for a stakeholder-utility process to develop appropriate measurement and evaluation methodologies to accomplish these objectives. ComEd Ex. 2.0, pp. 36-37; DCEO Ex. 1.0, p. 55; AG Ex. 1.0, pp. 6-7; NRDC Ex. 1.0, pp. 5-6; ELPC Ex. 1.0, pp. 3-4. Sound measurement and evaluation techniques are necessary not only to determine whether the statutorily-mandated standards are met, but also to determine whether costs have been reasonably and prudently incurred, as required by 220 ILCS 12-103(e).

A. The utility-stakeholder working group should develop evaluation methods, review program performance data and recommend timely adjustment of the energy efficiency and demand-response measures, on a going forward basis as a result of the evaluations in accordance with 220 ILCS 12-103(f)(7).

Since ComEd customers will support the proposed programs, those customers should be assured they receive the benefits (*e.g.*, energy savings and economic benefits, reduced environmental risks and pollutant emissions, and downward pressure on supply costs.). AG Ex. 1.0, p. 28. Rigorous evaluation of program performance is needed to ensure that ComEd delivers the statutorily-mandated energy efficiency and demand-reduction savings – and that ComEd, not ComEd customers, bear the risk if the standards are not met. AG Ex. 1.0, p. 27. ComEd's proposal unnecessarily shields it from risk of underperformance. ComEd Ex. 13.0, p. 12.

All parties support the creation of ComEd/DCEO-stakeholder working group to develop evaluation methods, review program performance data and recommend timely adjustment of the energy efficiency and demand-response measures, on a going forward basis as a result of the evaluations in accordance with 220 ILCS 12-103(f)(7). For example, a collaborative working group could systematically examine net-to-gross ratios for both programs and measures, and determine whether they need to be adjusted based on actual program performance.[4] The Working Group could also determine which deemed savings estimates or factors are most critical to evaluate in the first year or two of program implementation and further agree on which evaluation results will be applied retroactively and which should be applied only for future program savings determinations.

The bottom line is that the statute requires "independent evaluation of the performance of the cost-effectiveness of the utility's portfolio of measures and the Department's portfolio of measures, as well as a full review of the 3-year results of the broader net program impacts and to the extent practical, for adjustment of the measures

[4] As several parties have noted, using the same 0.8 NTG ratio for virtually the entire portfolio of programs (excepting the residential appliance recycling program) is inappropriate. Assuming the same ratio for a retail CFL program and a direct install low income program makes no sense and clearly ignores the very real differences in these markets and programs. AG Ex. 1.0, p. 34.

on a going-forward basis as a result of the evaluations." 220 ILCS 5/ 12-103(f)(7). All of the parties to this proceeding have a stake in the accuracy of that evaluation and in timely modification of the programs to achieve the energy efficiency and demand-response savings required by the PUA. Utility-stakeholder working groups have been used successfully around the country to address similar issues and are the logical vehicle for doing so here in Illinois. AG Ex. 1.0, at 7.

B. In order to be effective, the ComEd/DCEO-stakeholder working group must be independently funded, coordinated by a neutral facilitator, meet regularly and use a reporting system that ensures accountability and statewide consistency.

The ComEd/DCEO-stakeholder working group should be "an independent, effective, on-going forum for addressing . . . program details, as well as for addressing monitoring and evaluation issues." AG Ex. 1.0, at 5. See also, NRDC Ex. 1.0, pp.5-6; ELPC Ex. 1.0., pp.3-4. In order to be effective, the working group must be facilitated by a neutral party supported by funding from an independent[5] source (*i.e.*, not by the utilities or DCEO). AG Ex. 1.0, at 8. The scope of the working group activities "must include program design details, analysis of the programs and planning, implementation issues including contractors and procedures, monitoring, verification of savings and evaluation." *Id.*

[5] One possible source of independent support is the Energy Efficiency and Renewable Energy Office of the United States Department of Energy, which has funding to provide technical assistance to states for energy efficiency collaboratives, if requested by state regulators. See, *e.g.*, http://www.nrel.gov/docs/fy07osti/40780.pdf and http://www.eere.energy.gov/wip/technical_assistance.html.

In order to develop measurement and evaluation methodologies that will be ready to implement in 2008, the ComEd-DCEO working group will need to meet quite frequently. During the first year, the working group should meet monthly to work out measurement and evaluation issues, review status reports (at least quarterly) on program implementation and, where necessary, to recommend modification of any programs that are not operating successfully. "ComEd's proposal to meet quarterly is insufficient to deal with the many programs and policy details that need to be addressed, particularly in the first year." AG Ex. 1.0, at 7, citing ComEd. Ex. 1.0, p. 11.

The People support proposals for a comment tracking and response system to memorialize activities of the working group and to promote accountability. NRDC Ex. 1.0, p. 6. The People also agree that the stakeholder process is a helpful mechanism to promote statewide consistency in metrics used to assess program performance and an efficient means through which ComEd and Ameren can pool information to improve the cost-effectiveness of their efforts to achieve the statutorily-mandated energy efficiency and demand-response standards. NRDC Ex. 1.0, pp.7-8. Because working group activities will be highly technical in nature, there will sometimes be a need to assign tasks to smaller groups of technical experts that report to the full working group. ELPC Ex. 1.0, p.4.

C. The Commission should direct the ComEd/DCEO-stakeholder working group to submit periodic reports for the Commission's consideration during the annual reconciliation proceedings required under 220 ILCS 12-103(e) and (f)(6).

Collaborative working groups have been used successfully in other states "to reach consensus on a wide range of issues as an alternative to litigation." AG Ex. 1.0, at 7. In Illinois, if the working groups function in this manner, they will be an important forum for the utilities, DCEO and the stakeholders to resolve issues that would otherwise be litigated in annual Commission proceedings to examine the reasonableness and prudency of costs incurred in connection with the energy efficiency and demand-response programs. 220 ILCS 12-103(e) and (f)(6). The Illinois working groups will be more likely to function in this manner if the Commission were to direct the working groups to submit periodic reports for the Commission's consideration as part of its prudency review. The Commission should seize this opportunity to promote the effectiveness of the working groups as a consensus-seeking process and to streamline the annual reconciliation proceedings required by the PUA.

CONCLUSION

For the foregoing reasons, the People ask that the Commission only conditionally approve the ComEd/DCEO energy efficiency and demand-response plans. The Commission should require that appropriate measurement and evaluation methodology be used to determine whether performance standards are met based on actual performance. To that end, the Commission should also authorize a utility-stakeholder working group to develop appropriate measurement and evaluation methodologies.

Respectfully Submitted,

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